Degree Analytics

Order Form – Virginia Commonwealth University

General Information:

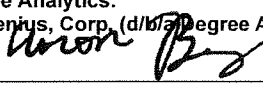|	
School: Virginia Commonwealth University	
School Contact: Alex Henson	**Billing Contact:**
Address: 907 Floyd Ave **City, State Zip:** Richmond, VA 23284	**Address:** **City, State Zip:**
Phone: (804) 828-0138	**Phone:**
E-Mail: alhenson@vcu.edu	**E-Mail:**
Degree Analytics Account Manager: Ron Johnson	
Phone: (760) 805-4872	**Email:** Ron@degreeanalytics.com
Effective Date: 7/1/2019	**Service Term:** 1 year

SaaS Subscriptions:

Description: EnGauge Analytics: Class Attendance
[Authorized User] Subscriptions: Unlimited

FY19/20 Term - SaaS Fees
- Class Attendance Metrics...................................$96,000
- Customer Support $0
- Meraki Integration...$0

Payment Terms: Quarterly, Net 30 days
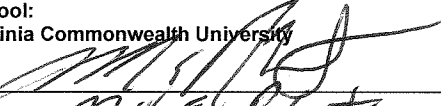**Estimated Invoice Date:** July 1, 2019

Customer's signature below constitutes the placement of an Order under and subject to the Services Agreement and attached hereto ("**Agreement**"), and includes and incorporates such Agreement. Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Terms. In the event of a conflict between the Agreement and the terms of this Order, [the Agreement] shall control.

MF Genius, Corp. (d/b/a Degree Analytics) and Customer have caused their duly authorized representatives to execute this Order as of July 1, 2019.

Degree Analytics:
MF Genius, Corp. (d/b/a Degree Analytics)

By: _____

Name: Aaron Benz

Title: CEO

Date: 05/06/2019

School:
Virginia Commonwealth University

By: _____

Name: _Mark E. Roberts_

Title: _Interim Director, Procurement Services_

Date: _5/8/19_

MASTER SERVICES AGREEMENT

This **MASTER SERVICES AGREEMENT** (this "**Agreement**") is entered into as of **07/01/2019** (the "**Effective Date**"), by and between **MF Genius, Corp. (d/b/a Degree Analytics)**, a Delaware corporation ("**Degree Analytics**") and Virginia Commonwealth University ("**School**") (Virginia Commonwealth University and Degree Analytics are each referred to herein as a "**Party**" and, collectively, as the "**Parties**").

BACKGROUND

WHEREAS, Degree Analytics has developed a proprietary analytics tool which, among other things allows schools to see information through websites, dashboards and reports as well as export data, visualize student behaviors and identify at-risk students (the "**Degree Analytics Report**").

WHEREAS, School is an educational institution that desires to receive, and Degree Analytics desires to provide, access to the Degree Analytics Report and certain related services (the "**Services**") pursuant to the terms and conditions specified in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and benefits derived hereby, the Parties agree as follows:

1.   **Degree Analytics Student Success Report And Services**.

(a)   <u>Rights to Use the Degree Analytics Report</u>. Subject to the terms and conditions of this Agreement, Degree Analytics hereby grants School and its Authorized Users (defined below) a limited, non-exclusive, non-transferable, non-sublicenseable, right and license to access and use: (i) the Degree Analytics Report to analyze certain data provided by School, including Internet and other School Logs, Learning Management System (LMS), and Student Information System (SIS) ("**School Data**"), and (ii) certain analytics and other data generated by the Degree Analytics Report in respect of the School Data, including class attendance, library usage, facility usage and at-risk prediction (the "**Degree Analytics Data**"), and to analyze such Degree Analytics Data.

(b)   <u>Authorized Users</u>. School may allow only the faculty, employees and independent contractors for each Campus (defined below) identified in an Order (defined below) ("**Authorized Users**") to access the Degree Analytics Report on behalf of School, provided that such Authorized Users abide by the terms set forth herein. School shall immediately notify Degree Analytics in the event that School or an Authorized User becomes aware of any unauthorized access to the Services or any violation of the terms of this Agreement. School shall be liable to the extent permitted by law for any breach of the Agreement by any Authorized User.

(c)   <u>Restrictions</u>. School and its Authorized Users may not rent, lease, lend, sell, redistribute, reproduce or sublicense the Degree Analytics Report, or use the Degree Analytics Report as a service bureau. School may not copy, decompile, reverse-engineer, disassemble, attempt to derive the source code of, modify, create derivative works of the Degree Analytics Report, or any part thereof, or use the Degree Analytics Report to violate any law or regulation. To the extent the foregoing restrictions are prohibited by applicable law or by an agreement between Degree Analytics and one of its licensors, the foregoing

1

activities are permitted only to the extent necessary to comply with such law or license(s). School shall not exploit the Degree Analytics Report in any unauthorized way whatsoever, including but not limited to, by trespass or burdening network capacity.

(a)   Reports. Degree Analytics will provide School with an electronic report (each, a "**Report**") detailing the results of the analysis provided by the Degree Analytics Report.

(b)   Support Services.

i.   Degree Analytics will provide the following support services to School—(i) email response time of 48 hours or less, and (ii) basic trouble shooting regarding errors.

ii.   Degree Analytics will assign to School a representative that will work closely with the School's objective. As of the Effective Date, the initial Degree Analytics representative will be **Marc Speed**. Any questions, strategy, feedback, or otherwise will be directed through this representative. The Degree Analytics representative and School will meet monthly to address any concerns, review results and discuss any other types of strategy or feedback as required.

(c)   Press Release Intentionally omitted.

2.   School Responsibilities.

(a)   System Data.
i.   During the Initial Term (defined below), Degree Analytics and School will use commercially reasonable efforts to enable integration and access by Degree Analytics to School's and each Campus's learning management system ("**LMS**"), School's student information system ("**SIS**"), WiFi logs, as well as other systems that Degree Analytics' requests (collectively "**Data Systems**"). School will be responsible for obtaining any required consents to enable such integration and access and will provide or obtain a license to Degree Analytics for all information accessible by Degree Analytics within the Data Systems. School retains ownership of all data in the Data Systems.

(b)   Degree Analytics' Performance. School understands that Degree Analytics' performance hereunder is dependent on School's timely and effective performance of School's tasks and responsibilities specified hereunder and timely decisions and approvals by School. Degree Analytics shall be entitled to rely on all decisions and approvals of the School in connection to its provision of the Degree Analytics Report to School.

3.   **Intellectual Property**.

(a)   Intellectual Property Rights. For the purposes of this Agreement, "**Intellectual Property Rights**" means patents and other patent rights (including patent disclosures and applications and patent divisions, continuations, continuations-in-part, reissues, and extensions thereof); copyrights and other rights in works of authorship (including software and including registered and unregistered copyrights and unpublished works of authorship); moral rights, trade secrets; know-how; trademarks and service marks (including registered and unregistered); and all other forms of tangible or intangible

2

work, invention, improvement, discovery, process, writing, design, model, drawing, photograph, report, formula, pattern, device, compilation, database or computer program, whether or not protectable under Title 17 of the U.S. Code and whether or not patentable or otherwise protectable under Title 35 of the U.S. Code and whether or not protectable or patentable under similar laws worldwide, that are not conceived of, prepared, procured, generated or produced, whether or not reduced to practice.

(b)   Degree Analytics Intellectual Property. Except as specifically set forth in this Agreement, all Intellectual Property Rights in and to the Degree Analytics Report, the Degree Analytics Data, and the Reports are and shall remain the sole and exclusive property of Degree Analytics. Without limiting the foregoing, Degree Analytics will retain exclusive ownership of (i) all of Degree Analytics' know-how, concepts, techniques, methodologies, ideas, templates, software, interfaces, utilities and tools, (ii) all updates, modifications, improvements, enhancements and derivative works of the Degree Analytics Report conceived, discovered, developed or reduced to practice, solely or in collaboration with others, during the course of performance of the Services, and (iii) in each case, all related Intellectual Property Rights. If School or any of its Authorized Users submits comments, suggestions, or other feedback regarding the Degree Analytics Report to Degree Analytics ("**Feedback**"), School agrees that Degree Analytics will own all Intellectual Property Rights to such de-identified Feedback without accounting or obligation to School.

(c)   School Intellectual Property. Except as specifically set forth in this Agreement, all Intellectual Property Rights in and to the School Data, and the Marks (defined below) is and shall remain the sole and exclusive property of School.

(d)   License to Reports. Subject to the payment of the applicable Charges, Degree Analytics grants to School a perpetual, non-exclusive, non-transferable, non-sublicensable, royalty free license to use, display and create derivative works of the Reports for the applicable School academic year for School's internal business and educational purposes.

(e)   Trademark License. School hereby grants to Degree Analytics a limited, non-exclusive, non-transferable (except as provided in Section 9(c)) license during the Term to use the trademarks, logos and associated branding provided by School to Degree Analytics (the "**Marks**") in order to provide and customize the Services to School, particularly for display within the Degree Analytics Report. Degree Analytics' use and display of the Marks will comply with the branding guidelines provided in writing by School from time to time.

(f)   Reference. Intentionally omitted.

(g)   Reservation of Rights. Each Party reserves all Intellectual Property Rights not expressly granted to the other Party in this Agreement. Except as expressly stated, nothing herein shall be construed to directly or indirectly grant to a receiving Party any right, title or interest in a providing party's Intellectual Property Rights in services or materials furnished by such providing Party hereunder.

4.   **Orders, Charges and Payment**.

3

(a)   Orders. To obtain access to the Services for a campus within School (each, a "**Campus**"), School shall submit an order to Degree Analytics identifying the applicable Campus (each, an "**Order**"). Each Order shall set forth the fees to be paid by School for access to the Services by such Campus (the "**Charges**"), the duration of access for the applicable campus ("**Access Period**"), and other applicable business terms.   No Order shall be binding upon Degree Analytics unless signed by an authorized representative of Degree Analytics.

(b)   Charges. Within five business days of the execution of each Order ("**Order Date**"), Degree Analytics will invoice School for the applicable Charges under such Order.

(c)   Payment Terms. All amounts due hereunder shall be paid in U.S. dollars. Unless expressly agreed to by the Parties in writing, all amounts shall be due and payable within thirty (30) days after receipt of the invoice. Any invoice remaining unpaid for more than thirty (30) days from receipt shall accrue interest at a rate of the lesser of one percent (1.0%) per month, or the highest rate allowed by law.

(d)   Taxes. The Charges payable under this Agreement shall not include local, state or federal sales, use, value-added, excise or personal property or other similar taxes or duties, and any such taxes shall be assumed and paid by School.

5.   Confidentiality.

(a)   Definition. As used in this Agreement, "**Confidential Information**" shall mean any confidential or proprietary information (i) related to a Party's operations, customers, suppliers, subscribers, finances, or (ii) other information received by a Party by virtue of that Party's relationship with the other Party including, but not limited to, finances, marketing plans, business opportunities, personnel, research, development, customer data, or know-how. For the avoidance of doubt, all such Confidential Information relating to the Degree Analytics Report shall be deemed to be the Confidential Information of Degree Analytics (excluding any School Data or any other information provided by School to the Degree Analytics Report). In addition, all Education Records (as defined below) shall be deemed to be the Confidential Information of School.

(b)   Exclusions. Confidential Information does not include information which (a) is rightfully received by the receiving Party from a third party without restriction, (b) is known to or developed by the receiving Party independently without use of the confidential information, (c) is or becomes generally known to the public by other than a breach of duty hereunder by the receiving Party, (d) has been approved in advance for release by written authorization of the non-disclosing Party, or (e) includes the pricing and terms of this Agreement.

(c)   Non-Use and Non-Disclosure. The receiving Party shall not disclose the disclosing Party's Confidential Information to any third party (other than as set forth herein) and may only use the disclosing Party's Confidential Information for the intended business purpose related to this Agreement and for the benefit of the disclosing Party, provided that Degree Analytics shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques that are acquired or used in the course of performing its obligations hereunder. Both Parties shall protect Confidential Information

4

of the other Party from disclosure or misuse by using the same degree of care as for their own confidential information of like importance, but shall at least use reasonable care. Further, both Parties agree to use reasonable business efforts to inform each of their employees or agents with access to any Confidential Information of their responsibilities under this Agreement in regard to protecting Confidential Information from disclosure. It is understood that said Confidential Information shall remain the sole property of the disclosing Party unless otherwise expressly set forth herein.

(d)   Disclosure Required by Law. Notwithstanding Subsection 5(c) above, a receiving Party may disclose the other Party's Confidential Information if the information is required by law to be disclosed in response to a valid order of a court of competent jurisdiction or authorized government agency, provided that the receiving Party must give the disclosing Party prompt written notice where reasonably possible.

(e)   Nothing herein is intended to limit VCU's compliance with the Virginia Freedom of Information Act.

6.   Representations and Warranties; Disclaimers
(a)   General Representations and Warranties. Each Party represents and warrants to the other Party that: (i) it has the full corporate right, power, and authority to enter into this Agreement and to perform the obligations and duties hereunder; (ii) the execution of this Agreement, and the performance of the obligations and duties hereunder, do not and will not violate any agreement to which a Party or by which a Party is otherwise bound; (iii) when executed and delivered by both Parties, this Agreement will constitute the legal, valid and binding obligation of both Parties, enforceable against the other Party in accordance with its terms; and (iv) each Party acknowledges that the other Party makes no representations, warranties, or agreements related to the subject matter hereof which are not expressly provided for in this Agreement.

(b)   FERPA. The Parties represent and warrant that they will at all times during the Term comply with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and its implementing regulations, 34 C.F.R. pt 99, ("**FERPA**") and other laws with respect to the Activities, the provision of School Data and its use of the Degree Analytics Report under this Agreement. To the extent that School discloses to Degree Analytics, or Degree Analytics has access to, education records or personally identifiable information contained in such records ("**Education Records**") under this Agreement, Degree Analytics agrees to comply with FERPA, and School agrees to assist Degree Analytics in such compliance, as a "school official" with "legitimate educational interests." The officers, employees, and agents of Degree Analytics may use such Education Records, but only for the purposes for which the disclosure was made.

(c)   School Data. School represents and warrants that none of the School Data or any other information provided by School to the Degree Analytics Report (including Education Records) infringes the Intellectual Property Rights of any third party or otherwise violates applicable law.

(d)   Consents and Approvals. School hereby represents and warrants that it has obtained, and covenants to obtain, all required consents or approvals that are necessary to allow Degree Analytics: (i) to collect, process, use and store Education Records, and (ii) to provide the Services. Degree Analytics' performance hereunder is specifically conditioned on School's receipt of such consents and approvals.

5

(e) <u>Disclaimer.</u> EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 6, DEGREE ANALYTICS MAKES NO OTHER WARRANTIES CONCERNING THE DEGREE ANALYTICS PLATFORM, THE APP, OR THE SERVICES WHETHER EXPRESS, IMPLIED, OR OTHERWISE, AND SPECIFICALLY DISCLAIMS, ON ITS OWN BEHALF ON AND BEHALF OF ITS SUPPLIERS AND LICENSORS, ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. DEGREE ANALYTICS DOES NOT WARRANT THAT THE DEGREE ANALYTICS PLATFORM WILL MEET ALL OF SCHOOL'S REQUIREMENTS.

7. FERPA and Student Records Handling

(a) The parties acknowledge and agree that certain information provided by School to Degree Analytics may be covered by the FERPA. Education Records (as defined in Section 6(b) above) obtained by Degree Analytics from School continue to be the property of and under the control of School. Further, subject to Section 3(b) above, the provisions of this Section 7 shall also apply to Reports containing Education Records.

(b) Parents, legal guardians, or Students may review personally identifiable information in the Student's Education records and correct erroneous information as permitted by applicable law by contacting School. The School Representative will inform Degree Analytics of the change.

(c) Degree Analytics shall take the following actions to confirm the security and confidentiality of Student's Education Records:

    i. Designating and training employees on the security and confidentiality of Education Records;

    ii. Limiting employee access to Education Records based on roles and responsibilities;

    iii. conducting background checks on employees who have access to Education Records;

    iv. conducting privacy training that includes FERPA for employees with access to Education Records; and

    v. protecting Education Records with technical, contractual, administrative, and physical security safeguards in order to protect it from unauthorized access release or use.

(d) In the event of an unauthorized disclosure of a Student's Education Records, Degree Analytics shall report to School pursuant to the following procedure:

    i. date of the breach, the types of information that were subject to the breach;

    ii. general description of what occurred; steps Degree Analytics is taking to address the breach;

    iii. the contact person at the vendor who the data holder can contact.

(e) Degree Analytics shall not use any information in a Student Education Record for any purpose other than those required or specifically permitted by this Agreement,

(f) Degree Analytics certifies that a Student's Education Records shall not be retained or available to Degree Analytics upon termination or expiration of this Agreement

6

(g)   The School agrees to work with Degree Analytics to ensure compliance with FERPA. In addition, Degree Analytics agrees to work with School's University Counsel to ensure compliance with FERPA if applicable.

8.   **Term And Termination**.

(a)   Term. Unless terminated earlier as set forth herein, the term of each Order shall be effective as of the Order Date and continue until the conclusion of the Access Period set forth in the Order. The term of this agreement shall extend from the Effective Date until the termination of all Orders (the "**Term**").

(b)   Termination; Suspension. Each Party shall have the right to terminate this Agreement or any Order if the other Party commits a material breach of this Agreement or any Order and does not cure such breach within thirty (30) days after receiving written notice of such breach from the non-breaching Party, provided that in the event a material breach relates only to a particular Order, the non-breaching Party may only terminate such Order. Additionally, Degree Analytics may also (at its discretion and in addition to other remedies it may have) suspend or terminate School's and its Authorized Users' access to the Degree Analytics Report at any time for any reason, including without limitation if Degree Analytics believes in good faith that School may have violated a law or restriction in this Agreement that cannot be sufficiently cured with notice.

(c)   Effect of Termination. Upon termination of this Agreement for any reason, School's rights to utilize the Degree Analytics Report shall immediately terminate, except as otherwise provided herein. Sections 3(a)-3(d), 3(h), 4 (as to amounts owed as of termination), 5, 6(d), 7(c), 8 and 9 shall survive termination of this Agreement.

9.   **Limitations of Liability; Indemnification**.

(a)   EXCEPT WITH RESPECT TO A PARTY'S BREACH OF SECTION 5 (ABOVE), TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, FOR ANY PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR FOR ANY DAMAGES FOR LOST REVENUE, LOST PROFITS OR LOSS OF BUSINESS OPPORTUNITIES. THE FOREGOING LIMITATIONS WILL APPLY REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b)   Degree Analytics shall indemnify, defend and hold harmless School and its affiliates and their respective directors, officers, employees and agents (collectively, the "**Indemnified Parties**") against all claims and all losses, liabilities, damages, fines, and penalties paid or payable to or for the benefit of any third party asserting a claim (including such third party's successors and assigns) pursuant to any settlement, judgment or award with respect to such claim (including taxes), and all related costs and expenses (including reasonable legal fees and disbursements and out-of-pocket costs of investigation, experts, litigation, settlement, judgment, interest and penalties) arising out of or related to

7

the indemnifying Party's breach of its representations and warranties set forth in Section 6 (each, an "Indemnified Claim"). Accordingly, School will promptly notify Degree Analytics of any claim or action brought against School in connection with this Agreement that School believes to be an Indemnified Claim. Upon Degree Analytics confirmation that such claim or action of such Indemnified Claim, Degree Analytics will immediately take over and defend any such claim or action in accordance with Section 2.2-514 of the Code of Virginia.

(c) Subject to the limitations contained in Section 9(a) as permitted by law,, Degree Analytics will be liable for the actual damages caused by its negligence, and the negligence of its officers, employees and agents in connection with this Agreement.

(d) To the extent permitted by the Virginia Tort Claims Act, Section 8.01-195.1, et. seq. of the Code of Virginia, as amended, and other applicable statutes relating to claims against the Commonwealth or its agencies, School shall be responsible for the negligent acts or omissions of its officers, employees, and agents. Nothing contained herein shall constitute a waiver of the sovereign immunity of VCU or the Commonwealth of Virginia.

10. General Provisions.

(a) Governing Law. The interpretation and enforcement of this Agreement, and all claims arising hereunder whether in contract, tort or otherwise, will be governed by the laws of the Commonwealth of Virginia, without giving effect to provisions related to choice of laws or conflict of laws. All disputes arising under this Agreement shall be brought before a court of competent jurisdiction located in Richmond, Virginia. To the extent any provision of this Agreement is prohibited by Virginia law or is otherwise not authorized by Virginia law due to School's status as an agency of the Commonwealth of Virginia, such provision is null and void.

(b) Force Majeure. Except for the failure to make payments, neither Party will be liable for any loss, damage or penalty resulting from delays or failures in performance resulting from acts of God, supplier delay or other causes beyond the non-performing Party's reasonable control and not caused by the negligence of the non-performing Party, and provided that such delay cannot reasonably be circumvented by the non-performing Party through the use of commercially reasonable alternate sources, workaround plans or other commercially reasonable means; provided, further, that the non-performing Party promptly notifies the other Party of the delay and the cause thereof and promptly resumes performance as soon as it is possible to do so.

(c) Assignment. Neither this Agreement nor any right hereunder or interest herein may be assigned or transferred by a Party without the express written consent of the other Party; provided, however, that either Party may assign this Agreement without such consent but with notice to the other party in the case of assignment in connection with a reorganization, merger, acquisition, sale of all or substantially all of such Party's assets related to this Agreement or similar transaction. Any purported assignment in violation of this Section shall be null and void. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

(d)   Other Remedies. In addition to the right to terminate this Agreement, each Party reserves all rights and remedies available to that Party under law or equity, including the right to seek damages and injunctive relief for breach or threatened breach of this Agreement by the other Party.   Notwithstanding Section 9(d), each Party may seek injunctive relief in any court of competent jurisdiction.

(e)   Compliance with Applicable Law. Each Party agrees to comply with all municipal, local, state, federal, and international trade laws, codes, rules, ordinances and regulations, as applicable to such Party in the conduct of its business.

(f)   Independent Contractors. In performing their respective duties under this Agreement, each of the Parties will be operating as an independent contractor. Nothing contained herein will in any way constitute or be deemed to have created any franchise, association, partnership, or joint venture between the Parties hereto, or be construed to evidence the intention of the Parties to establish any such relationship. Neither Party shall represent itself as, an agent, legal representative, or partner of the other Party, and shall not assume or purport to create any obligation on behalf of the other Party except as expressly stated in this Agreement. Each Party shall bear their own expenses incurred in the negotiation and execution of this Agreement.

(g)   Entire Agreement. This document, including all schedules and exhibits hereto, as well as the Data and Intellectual Property Protection Addendum, contains the entire agreement and understanding between the Parties concerning the subject matter of this Agreement. Neither Party is relying on any statements made by the other Party outside of this document. Each Party is relying on its own judgment and the advice of its advisors in connection with this Agreement. This document supersedes all prior communications, discussions, negotiations, proposed agreements, letters of intent, and all other agreements, whether written or oral, excepting solely all prior confidentiality and nondisclosure agreements to the extent they are not expressly superseded by this Agreement. Except as specifically provided herein, this Agreement may be amended only by written agreement signed by authorized representatives of both Parties.   It is the express intent of the Parties that this Agreement and any amendment thereto shall be interpreted solely by reference to their written terms. Any handwritten or typed changes to this Agreement must be initialed by both Parties in order to become effective.

(h)   Waiver. The waiver of any breach or default will not constitute a waiver of any other right in this Agreement or any subsequent breach or default. No waiver shall be effective unless in writing and signed by an authorized representative of the Party to be bound. Failure to pursue, or delay in pursuing, any remedy for a breach shall not constitute a waiver of such breach.

(i)   Notices. Any notice or other writing required or desired to be given or made pursuant to this Agreement shall be in writing, and shall be deemed to have been given and received, and to be effective for all purposes, the third business mail day after having been mailed via certified or registered United States mail in an envelope properly stamped and addressed to the proper Party at its registered office or, alternatively, when faxed to the following numbers or emailed to the following email, if the sender has confirmation of such fax or email, respectively, having been received:

If to School:
Virginia Commonwealth University
Attn: Alex Henson
907 Floyd Ave
Richmond, VA 23284
Email: alhenson@vcu.edu

If to Degree Analytics:
Degree Analytics
Attn: Aaron Benz
2505 E. 6th Street, Unit B
Austin, TX 78702
Email: aaron@degreeanalytics.com

    (j)   <u>Severability</u>. In the event that it is determined by a court of competent jurisdiction as a part of a final non-appealable judgment that any provision of this Agreement or part thereof is invalid, illegal, or otherwise unenforceable, such provision will be enforced or reformed as nearly as possible in accordance with the stated intention of the Parties, while the remainder of this Agreement will remain in full force and effect.

    (k)   <u>Construction</u>. This Agreement will be interpreted in accordance with its terms and without any strict construction against either Party. Ambiguity will not be interpreted against the drafting Party. The captions and headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

    (l)   <u>Counterparts</u>. This Agreement may be executed in separate counterparts and shall become effective when the separate counterparts have been exchanged between the Parties. This Agreement may be executed by facsimile or electronic signature. A facsimile or electronic reproduction of this Agreement may be executed by either Party, and such execution by both Parties shall be considered valid and binding for all purposes.

[remainder of page intentionally left blank; signature page to follow]

SIGNATURE PAGE

In witness whereof, the undersigned Parties have executed this Agreement, effective on the date first written above.

"School"
Virginia Commonwealth University

By: _____ 5/8/19

Name: Mark Roberts

Title: Interim Director, VCU Procurement Services

"Degree Analytics"
MF GENIUS, CORP. (D/B/A Degree Analytics)

By: _____

Name: Aaron Benz

Title: CEO, Founder

11

Data and Intellectual Property Protection

1. Definitions
   a. "End User" means the individuals authorized by the University to access and use the Services provided by Contractor under this Agreement.
   b. "Personally Identifiable Information" includes but is not limited to the following: personal identifiers such as name, address, phone number, date of birth, Social Security number, and student or personnel identification number; "personal information" as defined in Virginia Code section 18.2-186.6 and any successor laws of the Commonwealth of Virginia; personally identifiable information contained in student education records as that term is defined in the Family Educational Rights and Privacy Act, 20 USC 1232g; "medical information" as defined in Virginia Code Section 32.1-127.1:05; "protected health information" as that term is defined in the Health Insurance Portability and Accountability Act, 45 CFR Part 160.103; nonpublic personal information as that term is defined in the Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 USC 6809; credit and debit card numbers and access codes and other cardholder data and sensitive authentication data as those terms are defined in the Payment Card Industry Data Security Standards; other financial account numbers, access codes, driver's license numbers; and state- or federal-identification numbers such as passport, visa or state identity card numbers.
   c. "Securely Destroy" means taking actions that render data written on physical (e.g., hardcopy, microfiche, etc.) or electronic media unrecoverable by both ordinary and extraordinary means. These actions must meet or exceed those sections of the National Institute of Standards and Technology (NIST) SP 800-88 guidelines relevant to data categorized as high security.
   d. "Security Breach" means a security-relevant event in which the security of a system or procedure used to create, obtain, transmit, maintain, use, process, store or dispose of data is breached, and in which University Data is exposed to unauthorized disclosure, access, alteration, or use.
   e. "Services" means any goods or services acquired by the University from Contractor.
   f. "University Data" includes all Personally Identifiable Information and other information that is not intentionally made generally available by the University on public websites or publications, including but not limited to business, administrative and financial data, intellectual property, and patient, student and personnel data.

2. Rights and License in and to the University Data
   The parties agree that as between them all rights, including all intellectual property rights in and to University Data, shall remain the exclusive property of the University, and Contractor has a limited, nonexclusive license to use these data as provided in this Agreement solely for the purpose of performing its obligations hereunder. This Agreement does not give a party any rights, implied or otherwise, to the other's data, content, or intellectual property, except as expressly stated in the Agreement.

3. Intellectual Property Disclosure/Rights
   a. Unless expressly agreed to the contrary in writing, all goods, products, materials, documents, reports, writings, video images, photographs or papers of any nature including software or computer images prepared by Contractor (or its subcontractors) for the University will not be disclosed to any other person or entity without the written permission of the University.
   b. Contractor warrants to the University that the University will own all rights, title and interest in any intellectual property created for the University as part of the performance of this Agreement and will have full ownership and beneficial use thereof, free and clear of claims of any nature by any third party including, without limitation, copyright or patent

Rev. 4.12.2019

infringement claims. Contractor agrees to assign and hereby assigns to the University all rights, title, and interest in any and all intellectual property created for the University as part of the performance of this Agreement, and will execute any future assignments or other documents needed for the University to document, register, or otherwise perfect such rights. Nothing in this section is intended to or shall be construed to apply to existing intellectual property created or owned by the Contractor that the University is licensing under this Agreement. For avoidance of doubt, the University asserts no intellectual property ownership under this clause to any pre-existing intellectual property of the Contractor, and seeks ownership rights only to the extent Contractor is being engaged to develop certain intellectual property as part of its services for the University.

    c.   Notwithstanding the foregoing, for research collaboration pursuant to subcontracts under sponsored research agreements administered by the University's Office of Sponsored Programs, intellectual property rights will be governed by the terms of the grant or contract to the University to the extent such grant or contract requires intellectual property terms to apply to subcontractors.

4.   Data Privacy

    a.   Contractor will use University Data only for the purpose of fulfilling its duties under this Agreement and will not share or disclose such data to any third party without the prior written consent of the University, except as required by this Agreement or as otherwise required by law.

    b.   University Data will not be stored outside the United States without prior written consent from the University.

    c.   Contractor will provide access to University Data only to its employees and subcontractors who need to access the data to fulfill Contractor obligations under this Agreement. Contractor will ensure that employees who perform work under this Agreement have received appropriate instruction and understand how to comply with the data protection provisions of this Agreement.

    d.   The following provision applies only if Contractor will have access to the University's education records as defined under the Family Educational Rights and Privacy Act (FERPA): Contractor acknowledges that for the purposes of this Agreement it will be designated as a "school official" with "legitimate educational interests" in University education records, as those terms have been defined under FERPA and its implementing regulations, and Contractor agrees to abide by the limitations and requirements imposed on school officials. Contractor will use the education records only for the purpose of fulfilling its duties under this Agreement for University's and its End User's benefit, and will not share such data with or disclose it to any third party except as provided for in this Agreement, required by law, or authorized in writing by the University.

5.   Data Security

    a.   Contractor will store and process University Data in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure Contractor's own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved. Without limiting the foregoing, Contractor warrants that all electronic University Data will be encrypted in transmission (including via web interface) in accordance with industry best practices commensurate to the sensitivity of the information such as controls outlined in the Moderate or High control baselines in the latest version of National Institute of Standards and Technology Special Publication 800-53.

    b.   If Contractor stores Personally Identifiable Information as part of this Agreement, Contractor warrants that the information will be stored in accordance with industry best practices commensurate to the sensitivity of the information such as controls outlined in

the Moderate or High control baselines in the latest version of National Institute of Standards and Technology Special Publication 800-53.

    c.   Contractor will use industry-standard and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing Services under this Agreement.

6.   Employee Background Checks and Qualifications

Contractor shall ensure that its employees, full-time or part-time, including newly hired, re-hired, seasonal, and temporary who may have access to University Data have passed a criminal background check pursuant to the Code of Virginia, §2.2-1201.1. Criminal background checks shall comply with the standards set forth in VCU's employment policies: http://www.policy.vcu.edu/sites/default/files/Criminal%20Conviction%20Investigations.pdf

Specifically, Contractor shall ensure an investigation is conducted by a third-party vendor utilizing courthouse records and national databases to obtain records within the past seven (7) years. Convictions related to drugs, violence, and sexual behavior are generally considered job related due to the nature of the VCU environment and the need to provide reasonable levels of protection for students, patients, employees, visitors and institutional resources. Individuals with failed background checks shall not participate in the performance of this Agreement and must undergo additional evaluation before access to information is provided. Contractor shall maintain records sufficient to document the completion of required criminal background checks. The University reserves the right in its sole discretion to perform audits of Contractor's compliance at the University's expense to ensure compliance with this term.

7.   Data Authenticity and Integrity

Contractor will take reasonable measures, including audit trails, to protect University Data against deterioration or degradation of data quality and authenticity. Contractor will be responsible during the terms of this Agreement, unless otherwise specified elsewhere in this Agreement, for converting and migrating electronic data as often as necessary so that information is not lost due to hardware, software, or media obsolescence or deterioration.

8.   Security Breach

    a.   Response. Upon becoming aware of a Security Breach or of circumstances that are reasonably understood to suggest a likely Security Breach, Contractor will timely notify the University consistent with applicable state or federal laws, fully investigate the incident, and cooperate fully with the University's investigation of and response to the incident. Except as otherwise required by law, Contractor will not provide notice of the incident directly to individuals whose Personally Identifiable Information was involved, regulatory agencies, or other entities, without prior written permission from the University.

    b.   Liability. If Contractor must under this Agreement create, obtain, transmit, use, maintain, process, or dispose of the subset of University Data known as Personally Identifiable Information, the following provisions apply: In addition to any other remedies available to the University under law or equity, Contractor will reimburse the University in full for all costs incurred by the University in investigation and remediation of any Security Breach caused by Contractor, including but not limited to providing notification to individuals whose Personally Identifiable Information was compromised and to regulatory agencies or other entities as required by law or contract; providing one year's credit monitoring to the affected individuals if the Personally Identifiable Information exposed during the breach could be used to commit financial identity theft; and the payment of legal fees, audit costs, fines, and other fees imposed by regulatory agencies or contracting partners as a result of the Security Breach.

9. Response to Legal Orders, Demands or Requests for Data
    a. Except as otherwise expressly prohibited by law, Contractor will
        i. immediately notify the University of any subpoenas, warrants, or other legal orders, demands or requests received by Contractor seeking University Data;
        ii. consult with the University regarding its response;
        iii. cooperate with the University's reasonable requests in connection with efforts by the University to intervene and quash or modify the legal order, demand or request; and
        iv. provide the University with a copy of its response upon the University's request.

    b. If the University receives a subpoena, warrant, or other legal order, demand (including request pursuant to the Virginia Freedom of Information Act) or request seeking University Data maintained by Contractor, the University will promptly provide a copy to Contractor. Contractor will promptly supply the University with copies of data required for the University to respond and will cooperate with the University's reasonable requests in connection with its response.

10. Data Transfer Upon Termination or Expiration
    a. Upon termination or expiration of this Agreement, Contractor will ensure that all University Data are securely returned or destroyed as directed by the University in its sole discretion. Transfer of University Data to the University or a third party designated by the University shall occur within a reasonable period of time and without significant interruption in service. Contractor shall ensure that such transfer/migration uses facilities and methods that are compatible with the relevant systems of the University or its transferee, and to the extent technologically feasible, the University will have reasonable access to University Data during the transition. In the event the University requests destruction of its data, Contractor agrees to Securely Destroy all data in its possession and in the possession of any subcontractors or agents to which Contractor might have transferred University Data. Contractor agrees to provide documentation of data destruction to the University.
    b. Contractor will notify the University of impending cessation of its business and any contingency plans. This includes immediate transfer of any previously escrowed assets and data and providing the University access to Contractor's facilities to remove and destroy University-owned assets and data. Contractor shall implement its exit plan and take all necessary actions to ensure a smooth transition of service with minimal disruption to the University. Contractor will also provide a full inventory and configuration of servers, routers, other hardware, and software involved in service delivery along with supporting documentation, indicating which if any of these are owned by or dedicated to the University. Contractor will work closely with its successor to ensure a successful transition to the new equipment, with minimal downtime and effect on the University, all such work to be coordinated and performed in advance of the formal, final transition date.

11. Audits
    a. The University reserves the right in its sole discretion to perform audits of Contractor at the University's expense to ensure compliance with the terms of this Agreement. Contractor shall reasonably cooperate in the performance of such audits. This provision applies to all agreements under which Contractor must create, obtain, transmit, use, maintain, process, or dispose of University Data.
    b. If Contractor must under this Agreement create, obtain, transmit, use, maintain, process, or dispose of the subset of University Data known as Personally Identifiable Information or financial or business data which has been identified to Contractor as having the potential

to affect the accuracy of the University's financial statements, Contractor will at its expense conduct or have conducted at least annually a(n):

    i.   American Institute of CPAs Service Organization Controls (SOC 2) Type II audit, or other security audit with audit objectives deemed sufficient by the University, which attests Contractor's security policies, procedures and controls;

    ii.   vulnerability scan of Contractor's electronic systems and facilities that are used in any way to deliver electronic services under this Agreement; and

    iii.   formal penetration test of Contractor's electronic systems and facilities that are used in any way to deliver electronic services under this Agreement.

Additionally, upon University request, Contractor will provide the results of the above audits, scans and tests, and will promptly modify its security measures as needed based on those results in order to meet its obligations under this Agreement. The University may require, at University expense, Contractor to perform additional audits and tests, the results of which will be provided promptly to the University.

12.   Compliance

    a.   Contractor will comply with all applicable laws and industry standards in performing services under this Agreement. Any Contractor personnel visiting the University's facilities will comply with all applicable University policies regarding access to, use of, and conduct within such facilities. The University will provide copies of such policies to Contractor upon request.

    b.   Contractor warrants that the service it will provide to the University is fully compliant with relevant laws, regulations, and guidance that may be applicable to the service, such as: the Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH), Gramm-Leach-Bliley Financial Modernization Act (GLB), Payment Card Industry Data Security Standards (PCI-DSS), Americans with Disabilities Act (ADA), Federal Export Administration Regulations, and Defense Federal Acquisitions Regulations.

    c.   If the Payment Card Industry Data Security Standards (PCI-DSS) are applicable to Contractor service provided to the University, Contractor will, upon written request, furnish proof of compliance with PCI-DSS within 10 business days of the request.

    d.   Section 508 Compliance: All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of the University (the "Technology") shall comply with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended. If requested, the Contractor must provide a detailed explanation of how compliance with Section 508 of the Rehabilitation Act is achieved and a validation of concept demonstration. The requirements of this Paragraph along with the Non-Visual Access to Technology clause below shall be construed to achieve full compliance with the Information Technology Access Act, §§ 2.2-3500 through 2.2-3504 of the *Code of Virginia*.

    e.   Nonvisual Access to Technology: All Technology shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this Agreement:

        i.   effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;

        ii.   the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;

        iii.   nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and

iv.   the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if University determines (i) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software, or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration. The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, §§ 2.1-807 through 2.1-811 of the Code of Virginia.

13.   No End User agreements
This Agreement is the entire Agreement between the University (including University employees and other End Users) and Contractor. In the event Contractor enters into terms of use agreements or other agreements or understandings, whether electronic, click-through, verbal or in writing, with University employees or other End Users, such agreements shall be null, void and without effect, and the terms of this Agreement shall apply.

14.   Survival
Contractor's obligations under Section 10 shall survive termination of this Agreement until all University Data has been returned or securely destroyed.